IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1071 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT
Versus
JAGDISHBHAI KAKALDAS VORA

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Appearance :
MR KC SHAH APP for Appellant
NOTICE SERVED for Respondent

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

Date : 14/02/2007

ORAL JUDGMENT

1. This appeal is preferred by the State under Section 378 of the Code of Criminal Procedure against the judgment and order delivered by the learned Metropolitan Magistrate, Court No.16, Ahmedabad on 19th September, 1997 in Criminal Case No.1922/1991 whereby the present respondent i.e. original accused came to be acquitted by the learned Magistrate for the charges levelled against him under Sections 326, 323 and 504 of the Indian Penal Code. Vide order passed by this Court on 9th February, 1998, this Court [Coram: M.S.Parikh,J.] was pleased to grant leave to appeal and appeal came to be admitted.

2. As per the brief facts of the case, the incident in question occurred at Ahmedabad on 26th October, 1991 and complaint of which came to be filed by Kaushikkumar Kakaldas Vora before the Kalupur Police Station at 22.00 Hours. Accordingly, complainant Kaushikkumar Kakaldas Vora and the accused – respondent,

both are real brothers. On the date of the incident, at about 6.00 a.m. in the morning, complainant - Kaushikkumar Kakaldas Vora had been to the area known as Padshahni Pole where the accused was residing with his father. According to the complainant, he was accompanied with her sister Madhuben and brother-in-law Mahendrakumar Amratlal Jain. All of them had been to the house of the accused for inquiring about the health of their father and to settle the dispute with the accused about the property of their father and deceased mother. During conversation, complainant party inquired from the accused as to how he recovered ornaments from the locker of the Bank. The accused thereupon was provoked and started giving abuses. The sister Madhuben attempted to pursue the accused, but the accused caught hold her by her hair and had beaten her with fists. The complainant - Kaushikkumar Kakaldas Vora tried to intervene, but the accused caught hold of him and gave bite on

tip of the nose of the complainant to the extent that the tip of the nose of the complainant was separated. The incident occurred, according to the complainant, at about 9.00 p.m. The complaint was investigated by the police and ultimately, a chargesheet for the abovesaid offences came to be filed in the Metropolitan Magistrate against the accused – respondent herein.

3. The prosecution examined as many as six witnesses on not pleading the guilty by the accused. Both the parties were heard at length. After recording the statement of the accused – respondent herein under Section 313 of the Code of Criminal Procedure wherein the defence of the accused was that there were disputes amongst the brothers about the property for which the complainant had been to his house quarreling with him for which he had also filed a complaint before the police, because the complainant had beaten him. It was his defence that this complaint came to be filed by the complainant as a counter

blast to the complaint filed by him. After hearing both the parties at length, the learned Judge came to the above conclusion that the prosecution could not establish fully the charge against the accused and, therefore, he was entitled to acquittal and hence, this appeal by the State.

4. Learned APP Mr.K.C.Shah for the appellant – State was heard at length. While the respondent – accused is served, but nobody has turned up for the respondent. However, along with the learned APP, I have gone through the Record & Proceedings of the matter carefully and thoroughly.

5. It appears that complainant - Kaushikkumar Kakaldas Vora at Ex.4, Madhukantaben Mahendrabhai at Ex.6, Mahendrabhai Amratlal Shah at Ex.7, Abdul Sattar Mohmadbhai Saiyed at Ex.10, Kumarpal Chinubhai Shah at Ex.15 are the eye witnesses of the incident. While Rakesh Sanketbhai Shah at Ex.8 is panch witness, who has turned hostile, Dr.Shashank

Chandrakant Desai at Ex.11, is the doctor, who has examined injured complainant and Lalta Prasad Bhavarlal Purohit at Ex.16 is the Investigating Officer. Now before going through the evidence for its independent assessment, it is necessary to scrutiny the reasons given by the learned trial Judge for acquitting the accused – respondent herein.

6. Learned trial Judge observed that it is not in dispute that the parties to the incident are in relation like brothers and sisters and father. It is not in dispute that there was a dispute amongst them about the property of the father of the complainant and the accused. It is observed by the learned trial Judge from appreciation of the evidence that though the incident took place in the house of the accused where there might not be any independent witness, but during investigation, two independent witnesses i.e. Abdul Sattar Mohmadbhai Saiyed and Kumarpal Chinubhai Shah both were found. It was observed by the trial Judge that both these

independent witnesses did not support the version of the complainant that on account of quarrel and on account of the bite on the nose of the complainant by the accused, the tip of the nose was cut off and there was permanent disfiguration of the complainant. On the contrary, this independent witness, particularly, the witness Kumarpal Chinubhai Shah stated that there was grappling between the accused and the complainant and on account of this grappling, utensils fell down from the nearby cupboard, which caused injury to the complainant on the tip of the nose. In addition to this, while appreciating the evidence of the prosecution, the trial Judge observed that there were contradictions and exaggerations in the deposition of other witnesses, who are interested and related witnesses. The witness Madhukantaben Mahendrabhai exaggerated and stated that the witness – Abdul Sattar Mohmadbhai Saiyed as well as the wife of the accused took part in the quarrel and had beaten her, while this

was not the version of the prosecution case at all. Likewise, witness Mahendrabhai Amratlal Shah, husband of witness Madhukantaben stated in his deposition that the wife of the accused as well as his two sons caught hold of Madhukantaben and she was beaten by them. The trial Judge again observed that this was also not the original prosecution case. The learned trial Judge also observed that for the same incident, the accused also had filed a complaint before the Police Station. The trial Judge further observed that the father of complainant and accused who was very well present at the time of incident could not be examined by the prosecution. In view of the contradiction and exaggeration in evidence, the learned trial Judge came to the conclusion that the evidence of the complainant and Madhukantaben and Mahendrabhai being interested and related witnesses, is not free from doubt and creditworthiness of their say is shaken especially in the circumstances that the two

independent witnesses have not supported the prosecution case and one of such witnesses has categorically stated that the complainant was injured on account of falling of utensils from the cupboard during grappling between the accused and the complainant. Learned trial Judge, therefore, came to the conclusion that the prosecution could not prove the case beyond reasonable doubt as the deposition of the interested witnesses did not inspire any confidence.

7. Undoubtedly, the principle while dealing with the acquittal appeal are well settled. The High Court possesses all the powers, while dealing with the order of acquittal and nothing less than the powers it possesses while hearing an appeal against an order of conviction. The High Court has the power to reconsider the whole issue, reappraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial court. Only, if the said findings are against the weight of the evidence on

record i.e. the findings of the trial Court is perverse interference in the findings of the trial Court would be justified. It is the duty of the High Court to consider each ground on which the order of acquittal is based and to record its own reasons for not accepting those grounds and not subscribing to the view expressed by the trial Court that the accused is entitled to acquittal. Even if from the scrutiny and reappraisal and other material on record, if two views are possible; the view favourable to the accused should be adopted. It must not be forgotten that the trial Court had the advantage of looking at the demeanour of witnesses and observing their conduct in the Court especially in the witness-box.

8. I have undertaken fresh scrutiny and reappraisal of the evidence recorded by the trial Court, it appears that it is not in dispute that there was dispute amongst the parties for the property of the father. Manner in which the incident occurred, it is

found that there is some contradiction in deposition of P.W.1 - Kaushikkumar Kakaldas Vora, which is evident from the evidence of the complainant. P.W.2 – Madhukantaben Mahendrabhai Shah, at Ex.6 stated that while conversation was going on about the locker of the Bank, the accused was provoked and she was beaten by him and she further stated that Abdul Sattar Mohmadbhai Saiyed and the wife of the accused also had beaten her. Now, later part is not the prosecution version, while P.W.3 - Mahendrakumar Amratlal Jain at Ex.7 introduced new theory to the prosecution case that his wife was beaten by Abdul Sattar Mohmadbhai Saiyed, wife of the accused and his two sons, which is also not the prosecution version and, therefore, the trial Court was reluctant to place reliance on the testimony of these three witnesses, who were highly interested in the conviction of the accused. The cardinal principle is that the trial Court is best Judge of the credibility of the witness who appeared before him and

trial Court had an opportunity to scrutiny the demeanour of the witnesses. So after careful scrutiny, I do not find that the findings of the trial Court in this respect are so perverse as to discard all the reasoning by taking the view not favourable to the accused particularly in the circumstances that other two independent eye witnesses did not support the prosecution version and stated on the contrary that the complainant got injured on account of falling of utensils from the cupboard. It must not also be forgotten that there was enmity between the parties about the property. It must also be borne in mind that for some incident, complainant had also lodged a complaint. Now while independently assessing the evidence recorded by the trial Court, even if two views are possible, the view taken by the trial Court in favour of the accused, must be adopted because the appreciation of the evidence undertaken by the trial Court is not found perverse as to

disbelieve and discard all the reasons for the acquittal assigned by the trial Court, particularly credibility placed by the trial Court on the abovesaid three related eye witnesses.

9. In the above view of the matter, after careful consideration and after hearing, learned APP at length this appeal must fail and stands dismissed. Bail bonds of the accused – respondent stands cancelled.

[J. R. VORA,J.]

(vijay)